

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGE CLARK,

Petitioner,

v.

CASE NO. 08-10523
HONORABLE VICTORIA A. ROBERTS

KENNETH ROMANOWSKI,

Respondent.

**ORDER GRANTING PETITIONER'S RENEWED
MOTION TO COMPEL PRODUCTION OF TRANSCRIPTS**

This is a habeas corpus action under 28 U.S.C. § 2254. Petitioner challenges his Wayne County conviction for first-degree murder on grounds that (1) he was denied his right to cross-examine a prosecution witness, (2) there was insufficient evidence to support the jury's verdict, (3) his co-defendant's attorney engaged in egregious misconduct, (4) he was denied his right of confrontation by the admission of his co-defendant's preliminary examination transcript, (5) newly discovered evidence entitles him to a new trial, and (6-7) he was denied his right to effective assistance of trial and appellate counsel.

On August 13, 2008, Respondent filed an answer to the habeas petition, and on August 25, 2008, he filed certain state appellate court materials. Petitioner then moved to compel Respondent to file the following additional items from the state court record: the transcript of Petitioner's trial and sentencing; the transcript of his co-defendant's preliminary hearing; exhibits to his applications for leave to appeal in the Michigan Court

of Appeals and in the Michigan Supreme Court; and transcripts of the post-conviction hearings held on February 23, 2003 and July 9, 2004. On February 6, 2009, the Court granted Petitioner's motion to compel and ordered Respondent to file the requested items within sixty days of its order.

On April 7, 2009, Respondent replied to the Court's order, stating that he contacted the trial court on February 18, 2009, and requested the items enumerated in the Court's order. According to Respondent, exhibits to Petitioner's state appellate applications cannot be located, and there was no hearing on February 23, 2003. Respondent stated that he was awaiting receipt of the other items.

In a reply to Respondent's answer to the Court's order, Petitioner appears to abandon his request for copies of exhibits attached to his state appellate applications, because he attached a copy of those items to his habeas petition. See Reply to Respondent's Response, Dkt. #15, at ¶5. Petitioner also points out in his reply that the post-conviction hearing which he initially identified as occurring on February 23, 2003, actually occurred on February 25, 2003.

Currently pending before the Court is Petitioner's renewed motion to compel Respondent to file additional state court records. Petitioner seeks the February 25, 2003, transcript, as well as, the transcript of his trial and sentencing, the transcript of Kevin Harrington's preliminary examination, and the transcript of the July 9, 2004, post-conviction hearing.

At a minimum, the Court must have the transcript of trial, *Adams v. Holland*, 330 F.3d 398, 406 (6th Cir. 2003), and the Court is authorized to compel Respondent to furnish the other transcripts. See Rule 5(c) of the Rules Governing Section 2254 Cases

in the United States District Courts. Accordingly, Petitioner's renewed motion to compel [Dkt. #16] is **GRANTED**. Respondent is ordered to file the transcripts of: Petitioner's trial and sentencing; Kevin Harrington's preliminary examination; and the post-conviction hearings held in Petitioner's case on February 25, 2003 and July 9, 2004. The Court recognizes that the Michigan Attorney General often experiences delays when requesting transcripts from the Wayne County Circuit Court. Consequently, Respondent shall have sixty days from the date of this order to file the requested items with the Clerk of this Court or to show cause why he cannot comply with this order.

s/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: October 14, 2009

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on October 14, 2009.

s/Linda Vertriest

Deputy Clerk